BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of:	)	
Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-262
Tier Buy-Through Prohibitions	)	

COMMENTS

Adelphia Communications Corporation
Arizona Cable Television Association
Coaxial Communications, Inc.
Falcon Cable TV
Hauser Communications
Mid-America Cable Television Association
Pennsylvania Cable Television Association
Tele-Media Corporation

FLEISCHMAN AND WALSH
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 939-7900

Date: January 13, 1993

TABLE OF CONTENTS

SUMMARY

Commenters urge the Commission to consider the effect that the implementation of the tier buy-through prohibition will have on cable subscriber rates and to appreciate the technical limitations faced by cable systems that are not fully addressable. The tier buy-through prohibition, if implemented consistent with its legislative intent, should not be a force which drives up cable rates. To avoid this, the Commission must apply the statutory ten year grace period to any cable systems that are not able to comply without unintended expenditures for either equipment or labor.

Only fully addressable cable systems can comply with the anti buy-through restrictions with a minimum of cost. However, cable systems that presently use some non-addressable technology to secure their signals cannot comply without a tremendous equipment cost outlay and possible widespread subscriber dissatisfaction. For this reason, Congress created the ten year compliance period so that systems that are not fully addressable will not be forced to make such sweeping changes in their security technology. Rather, a natural evolution of technology will allow a gradual phase-in over the ten year period set by Congress.

The Commission must apply the ten year compliance period to both systems that use completely non-addressable technology (such as traps) and systems that use some addressable as well as some

nonaddressable technology. Such hybrid systems face very similar costs of compliance as the nonaddressable systems. The hybrid systems generally have not deployed full addressability because of the costs, and resulting rate increases, which would be entailed. The strain of the cost of compliance is particularly true for small systems that simply do not have enough subscribers to justify these costs. Further, the current use of scrambling of signals with full addressability is incompatible with some consumer electronics features and may cause subscriber dissatisfaction. In addition, a commitment to the current state of addressable technology would leave these systems incompatible with emerging digital compression technology.

Commenters also urge the Commission to define the anti buy-through nondiscrimination provision so that fully addressable systems are not inhibited from offering creative options to subscribers. Because of the low cost of satisfying subscriber requests for programming changes, fully addressable systems can offer choices that meet a multitude of subscriber demands. To allow this potential to flourish, the Commission should prohibit only those transactions that discriminate against basic subscribers. Nondiscriminatory discounts and promotional opportunities should not be inhibited. Lastly, the Commission should enforce the tier buy-through provision by resolving disputes as they arise, on a case by case basis, where such matters cannot be resolved at the local level.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of:	)	
Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-262
Tier Buy-Through Prohibitions	)	

COMMENTS

Fleischman and Walsh, on behalf of Adelphia Communications Corporation; Arizona Cable Television Association; Coaxial Communications, Inc.; Falcon Cable TV; Hauser Communications; Mid-America Cable Television Association (representing the states of Kansas, Nebraska, Oklahoma and Missouri); Pennsylvania Cable Television Association; and Tele-Media Corporation (collectively, "Commenters") hereby respectfully submits these comments in response to the above-captioned Notice of Proposed Rule Making ("Notice") regarding the tier buy-through prohibitions contained

in Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[1]

INTRODUCTION

The participants in these comments operate cable television systems of various sizes across the country, in areas ranging from rural to urban. State and regional trade associations representing cable television operators are also participants in these comments. The Commenters urge the Commission to be guided by certain overriding principles as it develops regulations to implement the tier buy-through restrictions of the 1992 Cable Act.

First, the ten-year grace period for compliance with the tier buy-through prohibition should be applicable to any cable system not presently technically able to comply without more than nominal expenditures of time or money, so as to avoid the unintended consequence of raising cable rates in communities where such compliance costs would be required. Second, the Commission should not force cable operators to prematurely invest in a particular technology to comply with anti buy-through as newer technologies are emerging which may provide greater benefits to consumers. Third, the FCC's non-discrimination rules relating to the tier buy-through prohibition should be designed to promote marketing flexibility so as not to inhibit consumer choice.

---

[1]Pub. L. 102-385, 106 Stat. 1460 (1992). Section 3 of the 1992 Cable Act amends Section 623(b)(8) of the Communications Act of 1934 (the "Act"), 47 U.S.C. §543(b)(8).

I. CONGRESS ALLOWED A TEN YEAR GRACE PERIOD TO AVOID UNNECESSARY COSTS.

Compliance with the tier buy-through restrictions will impose substantial technical problems and other costs on the cable operator. Congress was obviously mindful of such costs. Section 623(b)(8)(B) of the Act provides a ten year grace period for compliance with the anti buy-through requirement for any "cable system that, by reason of the lack of addressable converter boxes or other technical limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A)". Moreover, Sec. 623(b)(8)(C) of the Act allows the FCC to grant additional waivers of the ten year grace period if it determines "that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates." Accordingly, Commenters urge the Commission to implement the anti buy-through provisions cautiously, making every effort to avoid the imposition of unnecessary additional costs which will adversely affect cable rates and to avoid mandating technologies which may exacerbate consumer unfriendliness and adversely affect customer satisfaction.

A. The Ten Year Grace Period Was Intended To Protect Cable Operators From Suffering Immediate Compliance Costs.

As the Commission recognizes, it must define those systems which are presently unable to comply with the anti buy-through prohibition.[2] Commenters submit that any cable system which

---

[2]See Notice at ¶¶ 4-5.

would be required to incur more than nominal costs to comply with anti buy-through should be afforded the full ten year grace period. This position is entirely consistent with the Commission's tentative conclusion stated in the Notice: "[w]e believe that, under the Act, cable systems which were not designed and built with (or upgraded to incorporate) addressable technology are by definition within the scope of the Act's 10-year exemption."[3]

The legislative history of the anti buy-through prohibition reveals that Congress was well aware that most systems would require the ten year transition period given the need for adequate time to install the necessary technology. There is considerable evidence that Congress did not intend to prematurely force cable systems to accelerate the development of addressable technology beyond a ten year compliance timetable.

First, the buy-through prohibition is part of a larger basic rate regulation scheme of §3 of the 1992 Cable Act.[4] This scheme is intended to promote reasonable basic rates. However, any FCC rules that force systems to either immediately install expensive

---

[3]See Notice at ¶6.

[4]See 47 U.S.C. §543(b)(1) ("The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable."); see also, H.R. REP. No. 628, 102d Cong., 2d Sess. 79 (1992) ("The Act provides a new Section 623 in the Communications Act to ensure that consumers have the opportunity to purchase basic service at reasonable rates.")

equipment or incur other unnecessary costs will surely result in increases to basic rates.[5]

Second, it is significant to note that the Joint Conference Committee amended the House of Representatives' version of the buy-through exception to extend the transition period from five to ten years.[6] The Joint Conference Committee also changed the standard on waivers after the ten year period from the House provision of a two-year maximum waiver to a flexible waiver[7] if "compliance . . . would require the cable operator to increase its rates."[8] Clearly, the Conference Committee's reason for making these modifications was to prevent the premature, non-marketplace implementation of the buy-through prohibition from raising consumer rates. The Conference Committee obviously intended to allow cable systems that are not able to comply to have a significant period of time - at least ten years - to spread out the cost of installing the necessary technology and,

---

[5]Under the regulatory scheme of 47 U.S.C. §543(b)(2)(C), as amended by the 1992 Cable Act, the FCC's basic rate regulation standards must take into account both the direct costs of transmitting services carried on the basic level as well as an appropriate portion of joint and common costs.

[6]See, H.R. 4850, 102d Cong., 2d Sess. §3 (1992) (amending §623(b)(3) of the Act), *and*, H.R. CONF. REP. No. 862, 102d Cong., 2d Sess. 64 (1992).

[7]H.R. CONF. REP. No. 862, 102d Cong., 2d Sess. 64 (1992).

[8]Id. Even the House provision, however, manifested concern for the costs of premature compliance. Under the House buy-through prohibition scheme the compliance period was only five years but the FCC was to conduct a hearing to consider whether to extend this period by two years if compliance would impose "unreasonable costs on cable subscribers or cable operator[s]." H.R. REP. No. 628, 102d Cong., 2d Sess. 86 (1992).

if appropriate, even more time if compliance after ten years would threaten to raise rates.[9]

Commenters submit that the test for whether a system is technically capable of compliance with the anti buy-through requirement should be the same as the test for whether a system can impose more than a nominal fee for a service downgrade. Section 623(b)(5)(C) of the Act directs the FCC to adopt regulations to insure that charges for changing the service tier selected by the subscriber shall be based on the actual cost of such change and "shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or other similarly simple method."[10] The House Report recognized that "the technical configuration of [some] cable systems will be such that the selection back and forth between basic service and tiers offering cable programming may require equipment and labor costs to be incurred by cable operators," but that ". . . for

---

[9] This view of the intent of the Conference Committee is also supported by statements of Senator Daniel Inouye, a member of the Joint Conference Committee, during the Senate debate on the Conference Report: "[i]n response to the concerns about costs expressed by some cable operators, however, the conferees on S.12 gave cable operators ten years to comply ... for those cable systems that cannot offer this service because the cost of installing addressable technology would force cable rates up, the conference report allows the FCC to grant waivers." 138 Cong. Rec. S. 14608-09 (daily ed. Sept. 22, 1992).

[10] 47 U.S.C. §543(b)(5)(C).

fully addressable systems the Committee expects that the costs involved in consumer selection will be nominal."[11]

In other words, Congress has recognized that some systems are capable of adding or deleting any services delivered to individual subscribers by simply changing an entry code on a computer terminal located at the system office or headend. As shall be explained more fully below, such systems are typically referred to as "addressable." Other systems, however, cannot add or delete services without incurring far more substantial costs, e.g., sending a technician to the subscriber's premises (a "truck roll"), removing or installing additional devices located in or near the subscriber's premises, etc.

These are precisely the same considerations which govern whether a cable operator is technically able to comply with the anti buy-through requirement without the imposition of extraordinary costs which would adversely affect cable rates. Accordingly, the ten year grace period should apply to any cable systems which are currently unable to comply without incurring more than nominal costs, such as changing an entry code on a computer terminal in the case of a fully addressable cable system.

---

[11]H.R. REP. No. 628, 102d Cong., 2d Sess. 84 (1992) (emphasis added).

B. Only Fully Addressable Systems Are Currently Able To Comply With Anti Buy-Through.

Commenters concur with the Notice that, based on current generally accepted technology used in the cable industry, only those systems that are "fully addressable" are presently capable of complying with the tier buy-through requirement without incurring substantial costs that would drive up rates and/or require a redesign of existing signal security methods.[12] "Fully addressable" systems are those which scramble all video programming delivered by the system other than the basic service level (as defined pursuant to Section 623(b)(7) of the Act)[13] and have addressable converter boxes available for all subscribers desiring such scrambled services.[14] Systems that are not fully addressable are those that rely entirely on non-addressable security technology or those that use some combination of non-addressable and addressable technology to provide signal security. Non-addressable and partially addressable systems are both unable to immediately comply with the tier buy-through

---

[12]Notice at ¶6.

[13]47 U.S.C. §543(b)(7).

[14]This would not necessarily require cable operators to actually install addressable converter boxes for all subscribers. A basic-only subscriber in a fully addressable system who does not elect to purchase tiered, premium or pay-per-view channels has no need for an addressable converter box when basic service channels are unscrambled. In such a case, FCC rules should not require that the cable operator provide the basic subscriber with an addressable converter box, since each box typically costs anywhere from $110.00 to $160.00. Ultimately, such added costs would raise consumer rates with no corresponding benefit to the public.

provisions without substantial cost, subscriber confusion, and system reconfiguration.

The FCC must be particularly sensitive of the cost burdens that immediate compliance would have on small systems, defined as those systems with 1,000 or fewer subscribers. 47 U.S.C. §543(i). Legislative intent is clear that these systems should not be forced to incur significant costs to comply. *See*, 138 Cong. Rec. S. 14224, 14608-09 (1992) (statement of Senator Inouye) ("It is my intention that the FCC should take particular account of the problems that small cable systems may have in complying with the anti buy-through provision.").

In order to fully appreciate the technical problems and costs involved in rebuilding a cable system so that it is technically capable of compliance with the tier buy-through requirement, it is necessary to understand the principal signal security techniques which are used to insure that only those services which have been ordered and paid for are actually delivered to the appropriate individual subscribers. Generally speaking, there are two principal broad categories of security techniques currently used by the cable industry: traps and scrambling.

1. Traps. With a security system that uses frequency selective filtering devices ("traps"), the cable operator installs traps that permit only the requested channels to pass to the television set. Traps are passive devices which cannot be programmed remotely to implement changes requested by a

subscriber to add or delete programming services. Rather, the cable operator must make an individual service call, for example, to satisfy a basic-only subscriber's request for non-basic channels. The old trap must be removed or replaced with a new trap with a different configuration, and this requires additional expense both in material and labor.

There are some limits to the use of traps. First, traps are not a feasible method of providing pay-per-view programming, since the costs would be prohibitive, including the necessity of a truck roll to each customer requesting the event to either remove a negative trap or install a positive trap. Second, practical considerations require that a maximum of only three traps be used in any single cable drop. More than three traps in a single drop tends to increase mechanical problems such as breakage of tap connectors, violation of the National Electric Safety Code distance limit to the telephone line, possible signal leakage and signal ingress, as well as requiring the use of special mounting structures.

Another problem arises from the fact that the basic service tier trap would have to be configured to include all local must-carry and premium channels. Both of these categories of channels, however, are subject to change. New broadcast stations and premium services may become available at any time. This is exacerbated further by the fact that the statute apparently allows broadcast stations to change their must-carry/retrans-

mission consent election every three years.[15] Because individual traps cannot accommodate changes in the number of channels that the trap is designed to pass without replacement of the trap itself, this makes it extremely difficult to design a trapping scheme for the basic tier. The likely result is that cable operators would be discouraged from adding discretionary services to the basic level, from adding new a la carte premium services, and perhaps even forcing deletion of existing services to avoid repeated channel reconfiguration and the need to constantly replace expensive basic service traps.[16]

2. Scrambling. The other current principal signal security technique generally used in the cable industry is scrambling. Under this approach, the signals to be secured are scrambled (encrypted) at the headend. A descrambling device is then installed at the subscriber's premises so that all services which have been ordered and paid for by that subscriber can be descrambled and pass to the television set. Such descramblers may be either addressable or non-addressable.

If a system utilizing scrambling is non-addressable, then a "programmable" descrambler might be connected to the subscriber's television set. With a programmable box, the signals to be unscrambled are preset in the box itself; the cable operator cannot change the subscriber's access to various programming

---

[15]See 47 U.S.C. §325(b)(3)(B).

[16]Note, however, that one of the purposes of the 1992 Cable Act is to increase the diversity of programming. 1992 Cable Act, 2(b)(3); 47 U.S.C. §547(a).

services remotely at the headend. A programmable box must be replaced by the cable operator in order to change the available channels, which entails significant service costs. This is in contrast to a fully addressable system in which the operator can change a subscriber's access to programming at the headend with nominal cost, e.g., by changing an entry code on a computer terminal which sends a message to the affected descrambler to either scramble or descramble the desired channels. Programmable boxes are generally considered to be an obsolete technology because they are easily tampered with and the resulting cable theft is difficult to detect in the subscriber's home. In addition, programmable boxes are not feasible for pay-per-view programming since each request would entail switching one box for another for a single programming event. Accordingly, most modern cable systems which utilize scrambling deploy addressable descramblers.

3. Hybrids. As the Commission notes, many cable systems deploy a hybrid of traps and scrambling with either an addressable or non-addressable descrambler.[17] Such systems are usually configured to trap out all expanded tiers above the basic service level. Basic services are not scrambled so that basic only customers normally do not need a set-top converter. Access to cable service tiers is provided by removing the trap. Normally, some or all of the cable services will also be unscrambled so that subscribers with cable-ready televisions who

---

[17]Notice at ¶5.

do not subscribe to premium or pay-per-view services will also not need a converter. Only the highest tiers of cable service (if there are more than two tiers), premium services and pay-per-view services are typically scrambled and require a converter/descrambler, although certain high penetration, low churn premium services might be trapped rather than scrambled. The combination of trapping and scrambling represents an attempt to provide a low-cost, reasonably secure signal security system that is as compatible as possible with existing television sets and VCRs.

Hybrid systems that are partially addressable because they leave tiered cable services unscrambled and use traps to secure these services should also fall under the ten year exception to the tier buy-through prohibition. There are several reasons why a cable operator with addressable technology would choose to use traps for tier security and scrambling to secure some or all premium and pay-per-view channels. First, the costs of scrambling are reduced if the operator does not have to scramble the channels on the tiered services. Equipment costs are also reduced because the cable operator does not need to provide addressable boxes to subscribers who purchase any unscrambled cable programming and/or premium services.[18] Second, and perhaps

---

[18]As discussed above, a negative trapping device could be used to trap out the signal for non-requesting subscribers of a high penetration pay service with stable subscribership. In this way, the cable operator does not need to incur the cost to install an addressable box to provide access to a popular pay service.

more importantly, scrambled signals are potentially incompatible with the use of VCR recording and some television set features.[19] Third, as explained in greater detail in Section I.D., infra, cable operators may be concerned about the risks of investing in a fully addressable system at this stage of its technological development.

An addressable cable system that only scrambles certain premium and pay-per-view channels must use traps to block out basic-only subscribers' access to the tiered channels and traps to block access to any unscrambled pay services. If the buy-through prohibition were to immediately apply to such systems, they would be forced to incur the similar costs of compliance as are applicable to non-addressable systems that use traps, as outlined above. These cost increases would exert significant pressures to raise rates to consumers. Furthermore, by scrambling the tiered channels, the system may suffer in the area of consumer friendliness.

Reconfiguration of the system to retain trapping but still allow access to premium services is not a viable option for partially addressable systems. The same limitations with respect to trapping exist regardless of whether the system is non-addressable or only partially addressable. If the cable operator

---

[19]Congressional concern for scrambling and compatibility with consumer electronics products is evidenced in §17 of the 1992 Cable Act. As the FCC acknowledges, there is a serious tension between equipment compatibility and premature requirements to employ scrambling technology that may exacerbate consumer unfriendliness. See Notice at ¶6, n.6.

reconfigures the channel lineup and groups the premium channels immediately above the basic tier, additional traps would have to be installed to protect premium channels that are not requested. Because a maximum of three traps may be installed before the cable drop becomes too unwieldy, it may not be possible to arrange traps for every subscriber request or make available all premium services offered by the cable system.

Many systems have positioned their channels along the frequency spectrum such that the programming services offered on the basic level are at the low end of the spectrum, the tiered cable programming services are higher on the spectrum, and the premium and pay-per-view channels are at the highest end of the spectrum. With traps and/or programmable boxes, basic subscribers receive only the low end basic tier. Once the trap is removed to allow the basic subscriber in a trapped system to have access to premium services, the subscriber automatically has access to all tiered cable services as well. In order to secure those channels, the cable operator must incur the expense of additional scrambling equipment at approximately $2,000 per channel per headend. More significantly, in order to satisfy anti buy-through, the cable operator must also now provide a descrambler/converter box not only to the basic subscribers who desire premium services, but also to the expected majority of subscribers who desire the expanded tier (which now must be scrambled) and who do not already have an addressable descrambler

(e.g., because they do not subscribe to a scrambled premium or pay-per-view service).

This staggering cost can be seen in the example that follows. Suppose the cable operator has configured its channel lineup so that basic channels are at the low end, tiered cable programming services are in the middle, and pay and pay-per-view are at the high end of the frequency spectrum. The system has 2,000 basic-only subscribers, 13,000 economy-tiered subscribers, and 60,000 standard-tiered subscribers. Before the tier buy-through prohibition applies, the cable operator would trap the economy tier and provide addressable converter boxes to standard tier subscribers. If the tier buy-through prohibition were to apply, then the operator would face the following costs:

labor costs to remove traps and install addressable boxes for economy-tiered subscribers = 30.00 x 13,000 =	$390,000.00
cost of converter boxes for each subscriber = 110.00 x 13,000 =	$1,430,000.00
cost of converter boxes for additional outlets = 110.00 x 8,000 =	$880,000.00
cost of new controller at headend=	$20,000.00 to $60,000.00
cost of scrambling equipment= 2,000 x 8 =	$16,000.00
TOTAL COST =	$2,736,000.00 to $2,776,000.00

This estimate does not include a number of significant costs such as costs of addressability for basic subscribers who choose to purchase premium or pay-per-view services, as well as financing, administrative, and marketing costs. In addition, there may be customer dissatisfaction with the installation and addition of a converter box into the home where there was none

before, for example, due to potential interference with some VCR and television set features. By building on the example above, one can see that compliance may necessitate a massive increase in cable rates. If all basic subscribers exercised their buy-through rights and each purchased a premium service, the cable operator would not even recover total costs of complying with the buy-through provision for approximately 18 years, let alone derive any profit.[20]

C. Anti Buy-Through Requirements Should Not Be Imposed So As To Promote Signal Theft.

As the Commission considers regulations to implement the anti buy-through provisions, an overriding goal should be to avoid mandating any actions which are likely to increase the incidence of theft of cable service. Implementation of a security system to protect from signal theft is a vital component of any cable system in the United States today. A recent survey by the National Cable Television Association estimates that the cable industry lost approximately $4.7 billion of revenues in 1991 due to cable theft.[21] The study found that the average

---

[20] This calculation assumes a net revenue of $7.00/ month/ basic subscriber for HBO, 2,000 basic subscribers, added equipment and installation costs (not including additional outlets) of $280,000.00, that the economy tiered customers do not purchase a premium service, and that there are no future cost savings by implementing the addressable boxes.

[21] Cable Theft Reaches Record High Figure, Communications Daily, Special Western Show Edition, December 3, 1992, at 11.

percentage of theft was 11.21 of basic service (including tiers) and 11.52 percent of premium service.[22]

Congress has recognized the serious threat that theft poses to the cable television industry and has enacted both civil and criminal federal penalties against it.[23] The legislative history of the cable theft provision of the 1984 Cable Act reveals that Congress was deeply concerned about this problem:

> The theft of service is depriving the cable industry of millions of dollars of revenue each year which it would otherwise be receiving. The Committee believes that theft of cable service poses a major threat to the economic viability of cable operators and cable programmers, and creates unfair burdens on cable subscribers who are forced to subsidize the benefits that other individuals are getting by receiving cable service without paying for it.[24]

Congress' continuing concern for cable theft is evident in the 1992 Cable Act which strengthened existing penalty provisions.[25]

Cable operators should not be required to take actions that might promote theft of cable service in order to comply with the tier buy-through prohibitions. Although non-addressable and partially addressable systems are not able to provide basic subscribers with easy access to premium and pay-per-view channels, these systems should not be forced to unscramble their signals without proper security devices that protect the cable

---

[22] *Id.*

[23] 47 U.S.C. §553.

[24] H.R. REP. No. 934. 98th Cong., 2d Sess. 83 (1984).

[25] 1992 Cable Act, §21, amending 47 U.S.C. §533(b).

operator from cable theft. Since signal security is so critical to any cable television system, FCC rules should not force non-addressable or partially addressable systems to provide access to basic subscribers where the cable operator cannot protect its entire signal from theft.

Indeed, even the scrambling technologies utilized by fully addressable systems today are quickly becoming obsolete. Although the pace of industrywide conversion to addressability has heretofore allowed equipment manufacturers and cable operators to stay ahead of video pirates, an accelerated roll out of addressability on a wide scale could tip the balance in favor of the pirates. A premature widespread conversion to full addressability creates a natural market incentives for signal pirates to defeat current encryption technologies and either manufacture illegal decoders or alter existing boxes to circumvent addressability. To avoid this, the Commission should only apply the anti buy-through provisions to those situations where a system currently has the technology completely in place to comply with the statutory requirement.

D. **Anti Buy-Through Compliance Should Not Be Imposed Prematurely.**

Commenters estimate that no more than 10 to 15 percent of all cable systems are currently fully addressable. That number will grow steadily as technology improves, costs come down, systems are rebuilt and new services are developed for which a la

carte marketing is desirable.[26] Given the rapid technological advances that have occurred in such areas as digital transmission, signal compression, high definition television, video switching and the like, the Commission must not require systems which are not yet fully addressable to commit to any one particular scrambling or signal security approach merely to comply with anti buy-through prior to the end of the statutory transition period.

Indeed, the Commission astutely expresses interest "in the implementation of digital compression technologies which can also be used to increase dramatically the number of channels on a cable system."[27] While rapid breakthroughs have been achieved in the development of digital compression, the current generation of addressable descramblers deployed by the cable industry are entirely incompatible with digital transmission. For this reason alone, Commenters strongly urge the Commission not to require "new cable systems constructed during the 10-year period . . . to comply with the buy-through prohibition upon construction."[28] Such a requirement would require a massive deployment of potentially obsolete technology and inhibit advances such as

---

[26]The maturation and development of the pay-per-view market, the integration of video and computer technologies, and the development of digital compression all represent natural marketplace incentives for increasing the deployment of technology that will allow implementation of the anti buy-through provisions of the statute.

[27]Notice at ¶4, n.4.

[28]Notice at ¶9.

digital compression and HDTV. Rather, all cable systems should be entitled to the full ten year grace period established by Congress to allow a natural evolution to technologies capable of compliance with anti buy-through.[29]

II. MARKETING FLEXIBILITY IS PRO CONSUMER.

Section 623(b)(8)(A) of the Act provides that "[a] cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis." The Notice seeks comment on whether this nondiscrimination clause should be interpreted to mean "that basic subscribers who do 'buy through' [to premium services without purchasing intermediate services] are entitled to the same rate structure for those premium or pay-per-view services as subscribers purchasing intermediate services or tiers."[30] Commenters agrees with this interpretation.

Discrimination under the tier buy-through prohibition should be narrowly defined as the imposition of a greater price for a specific premium channel or a specific pay-per-view programming event charged to a basic-only subscriber as compared to a non-basic subscriber in the same franchise area. This definition addresses the concern that basic subscribers are not charged any

---

[29]For this same reason, the Commission should decline promulgation of waiver guidelines at this time. See Notice at ¶9. Any guidelines adopted now will surely be obsolete as the end of the 10 year grace period approaches, given the explosive advances in cable television technology.

[30]Notice at ¶7.